

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

RICHARD PATTON

PLAINTIFF

V.

CIVIL NO. 6:18-cv-06121

PHILLIP GLOVER, WALTER WHITE and
ARKANSAS COMMUNITY CORRECTION

DEFENDANTS

ORDER

The Court has received a Report and Recommendation (ECF No. 8) from United States Magistrate Judge Barry A. Bryant. Plaintiff has filed objections. Plaintiff, proceeding *pro se* and *in forma pauperis*, provisionally filed the instant civil rights action pursuant to 42 U.S.C. § 1983 against Defendant Arkansas Community Correction (ACC) Omega Supervision Sanction Center and Defendants Phillip Glover and Walter White in their official and individual capacities as employees of ACC (ECF No. 1.) This matter is ripe for review.

Plaintiff alleges his federal constitutional rights were violated when Defendants Glover and White purposely submitted false statements and documents to state officials directly causing the wrongful revocation of Plaintiff's parole (*Id.* at 4-6). Plaintiff complains further that he was denied the right to counsel and the right to have evidence in support of his defense presented to the parole board for consideration at the hearing. *Id.* Plaintiff alleges that the parole revocation proceedings were brought against him in retaliation for filing a complaint about a threat he received from members of the Aryan Brotherhood. According to Plaintiff, "The Arkansas Parole Board was used as a weapon in a hate crime..." (*Id.* at 6.) Based on Defendants' false representations, Plaintiff challenges the constitutionality of the parole revocation that caused him

to be arrested and imprisoned for one hundred eighty (180) days (*Id.*) Plaintiff seeks damages and reversal of the revocation of his parole. Plaintiff asks to be returned to supervised release. *Id.* at 17.

The Magistrate makes four recommendations. First, it is recommended that Plaintiff's claims against the ACC be dismissed, because States and state agencies are not "persons" subject to suit under §1983. *Howlett v. Rose*, 496, U.S. 356 (1990); *Will v. Mich. Dept. of State Police*, 490 U.S. 58 (1989); *McLean v. Gordon*, 548 F.3d 613, 618 (8th Cir. 2008). Second, it is recommended that Plaintiff's official capacity claims against Defendants Glover and White be dismissed, because an official capacity claim against an ACC employee is essentially a claim against the State of Arkansas, and "[t]he Eleventh Amendment bars suits against a State by citizens of that same State in federal court." *Williams v. Missouri*, 973 F.2d 599, 599-600 (8th Cir. 1992) (*citing Papasan v. Allain*, 478 U.S. 265, 276 (1986)). With regard to Plaintiff's request for an order reversing the parole revocation and returning him to supervised release, the Magistrate cites *Heck v. Humphrey*, 512 U.S. 477 (1994), and recommends that Plaintiff's claim for this type of relief be dismissed without prejudice because "Plaintiff has not ...made any allegations that his parole revocation and incarceration have been overturned or otherwise favorably terminated." (Report & Recommendations 4, ECF No. 8.) Finally, the Magistrate recommends that Plaintiff's claim of retaliation against Defendants Glover and White be allowed to proceed, because a disciplinary charge against a prisoner is actionable under section 1983 if done in retaliation for exercising protected speech activities. *See Rouse v. Benson*, 193 F.3d 936, 939 (8th Cir. 1999).

The Court has conducted a *de novo* review of those portions of the report and recommendation to which Plaintiff has objected. 28 U.S.C. 636(b)(1). Plaintiff's objections offer neither law nor fact requiring departure from the Magistrate's findings. The Report and Recommendation is proper, contains no clear

error, and is ADOPTED IN ITS ENTIRETY.

IT IS THEREFORE ORDERED that Plaintiff's personal capacity claim against Defendants Glover and White for First Amendment retaliation shall remain with the Court for further consideration. IT IS FURTHER ORDERED that Plaintiff's other claims are DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED this 19th day of March 2019.

/s/Robert T. Dawson

ROBERT T. DAWSON
SENIOR U.S. DISTRICT JUDGE